



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, FF

Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice") and to recover the filing fee. The tenant also applied for an order requiring the landlord to comply with the Residential Tenancy Act (the "Act") and suspending or setting the conditions of the landlord's right to enter the rental unit.

The parties appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

As a preliminary issue, I have determined that the portion of the tenant's application dealing with a request for orders for the Landlord's compliance with the *Residential Tenancy Act* (the "Act") and repairs and suspending or setting conditions on the landlord's right to enter the rental unit are is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's request for those orders, **with leave to reapply**.

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Cause.

Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled and to recover the filing fee?

Background and Evidence

This month to month tenancy started on December 1, 2009, monthly rent is \$750.00, due on the last day of the month, and the tenant paid a security deposit of \$375.00 on December 1, 2009.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord proceeded first in the hearing and testified in support of issuing the tenant a 1 Month Notice to End Tenancy for Cause. The Notice was dated October 31, 2011, was delivered via personal delivery on that date, listing an effective end of tenancy on December 1, 2011.

The causes as stated on the Notice alleged that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord and engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord submitted evidence which included a copy of the Notice, a note from the tenant which had been posted on a neighbour's door, a notice to the tenant, which served as a warning to the tenant, dated October 31, 2011, 2 letters from persons claiming to have witnessed the tenant attempting to forcibly enter the landlord's agent's apartment, and a copy of the tenancy agreement.

In support of his Notice, the landlord's agent testified that he was the resident property manager and has been since June 2011. The landlord's agent stated that the residential property was an older building and was what he characterized as a "rough building."

The landlord's agent stated that when the tenant hears noise she often bangs on walls to silence her neighbours. The agent stated that some complaints are issued with very little noise as he has checked on the noise.

The agent stated that on October 30, 2011, the tenant had a dispute with her neighbour concerning what the tenant alleged was excessive noise from the neighbour's rental unit. The landlord stated that the tenant and her neighbourhood often had disagreements.

The landlord pointed to the tenant's letter posted on the neighbour's door the next day, which he contended was threatening.

The landlord's agent stated that the tenant approached his apartment on the night in question, October 31, 2011, to complain about the noise and tried to force her way into his home. The landlord's agent submitted that he will not allow physical altercations.

In response, the tenant stated that the neighbour has a criminal record, does drugs and engages in illegal activities. The tenant stated that on the night in question, the

neighbour appeared to be high on drugs and was antagonistic with the noise level coming from his rental unit.

The tenant stated she asked the neighbour to turn down his television or music, which he did temporarily, but later turned it back on at a highly disruptive level. The tenant complained to the landlord's agent about the noise.

The tenant submitted that the next day, she returned home and the neighbour's music had again returned to a highly disruptive level, and further, the neighbour was not home at the time.

The tenant stated she called the police due to the excessive level of noise. The tenant stated that the police said the noise was too loud and talked to the landlord's agent.

The tenant stated that she was upset at the time of the incident in question, but submitted that the landlord would not open his door to address her complaints. The tenant denied trying to forcibly enter the rental unit, instead saying that she was only trying to keep the landlord's agent from closing the door on her.

The tenant stated that the landlord's agent also swore at her. The tenant submitted that unlike prior property managers, the present property manager was non-responsive to her complaints.

The landlord's agent admitted swearing at the tenant; however he was reacting to the tenant trying to force her way into his apartment, suggesting that he had office hours to tend to complaints.

Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Once the tenant made an Application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

In this instance, the burden of proof is on the landlord to prove the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord and engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

After considering all of the little written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord or engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

In reaching this conclusion I find the landlord failed to produce any compelling or persuasive evidence which would lead me to conclude the tenant had seriously jeopardized the health or safety of another occupant or the landlord. The landlord's agent issued a warning letter, which stated that the tenant took matters into her own hands; however, I find that the lack of response by the landlord's agent in dealing with an escalating situation between two tenants to be a contributing factor.

While I do not condone the tone and language in the note written by the tenant, posted on her neighbour's door, I do not find that the letter itself jeopardized the health or safety or lawful right of another occupant.

The main component of the landlord's evidence was disputed verbal testimony as the landlord failed to produce any witness or written statement from the other tenants or the neighbor in question.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony then the party who bears the burden of proof cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of "facts" is more believable because disputed oral testimony does not sufficiently meet the burden of proof.

Additionally the landlord failed to produce any evidence that the tenant was or had engaged in any illegal activity.

I therefore find that the landlord has submitted insufficient proof to establish the causes listed on the Notice.

Conclusion

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated October 1, 2011, is not valid and not supported by the evidence, and therefore has no force and effect. I **order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.**

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 25, 2011.

Residential Tenancy Branch